

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

06-1085 (DRD)

United States District Court	District Puerto Rico
Name (under which you were convicted): Jesus Perez-Cruz	Docket or Case No.: 97-00074 (DRD)
Place of Confinement: FCI Otisville	Prisoner No.: 14940-069
UNITED STATES OF AMERICA	Movant (include name under which you were convicted) v. Jesus Perez-Cruz

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: **U.S. District Court, U.S. Courthouse, 150 Chardon Avenue, Room 150, Hato Rey, PR 00918-1767**
2. (b) Criminal docket or case number (if you know): **97-00074 (DRD)**
2. (a) Date of the judgment of conviction (if you know): **November 9, 1998**
3. (b) Date of sentencing: **April 21, 1999**
3. Length of sentence: **324 months**
4. Nature of crime (all counts): **Conspiracy to distribute in excess of five kilograms of cocaine, in excess of five kilograms of cocaine base and in excess of one hundred kilograms of marijuana.**
5. (a) What was your plea? (Check one)

(1) Not guilty (2) Guilty (3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? I did not plea guilty to count 2, a violation of Title 21 U.S.C. § 848, but I did not enter a guilty plea to count 1, as detailed above on line 4.
6. If you went to trial, what kind of trial did you have? (Check one) Jury Judge only

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U.S. DISTRICT COURT
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7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes No

8. Did you appeal from the judgment of conviction? Yes No

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

(5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: There were no grounds previously.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Movant was denied Due Process under the Fifth Amend.
and denied a right to trial under the Sixth Amend.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
See attached memorandum.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____ N/A

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes No
If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:
(a) At preliminary hearing: Miriam Ramos-Grateroles, Address unknown

(b) At arraignment and plea: Same

(c) At trial: _____

(d) At sentencing: Same

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes No

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.* Movant is not requesting the court make any adjudication on any claim.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
 - (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
 - (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Movant request that this petition be dismissed without prejudice. See attached memorandum.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on JANUARY 10-06 (month, date, year).

Executed (signed) on JAN. 10 - 06 (date).

Jesus Pérez-Cruz

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.
